IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5454 OF 2002

Smt.Dumuli Maical Lop and others Petitioners

versus

Smt.Philomina Joseph Lop & others Respondents

P.S.Dani, adv. for petitioners.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th December 2004

PC :

1. Rule. Heard learned counsel for petitioner. None appears for respondent no.4. Other respondents have been served. This matter was placed yesterday and at that time also none appeared for respondent no.4.

2. This Court while issuing notice in this matter had granted ad-interim relief and stayed implementation and execution of the impugned order.

3. The impugned order is challenged by the petitioner on the ground that the present petitioners had been examined as witnesses of

defendants 1 to 7 and 17 in the Trial Court. The 4th respondent at that stage did not cross-examine the present petitioners. The entire evidence was closed. Thereafter, the 4th respondent prayed for issuance of summons to the petitioners as his witnesses. It is not clear from a bare perusal of the order passed by Trial Court as to why the unusual request of 4th respondent has been granted. The power of recall of witness at the instance of party who has summoned him earlier could be exercised in a given case. But why summon a witness who has been examined by the adversary as one's own witness is not clear from the impugned order at all. Since the impugned order has been stayed and the trial in Suit No.79 of 1995 has been allowed to proceed, in my view, no useful purpose would be served in allowing the request of respondent no.4 to summon the petitioner no.4 as a witness.

4. Since no reasons have been assigned for grant of aforesaid unusual request, the impugned order cannot be sustained. Accordingly Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(S.C.DHARMADHIKARI, J.)